IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/07/2002

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 197 of 1993

Tamil Nadu Matriculation and
CBSE School Teachers' Association,
represented by its General Secretary,
Anna Nagar, Madras-40. .. Petitioner.

Vs.

1.State of Tamil Nadu,
represented by the Commissioner and
Secretary to Government,
Education Department,
Fort St. George, Madras-9.

2. The Director of School Education,
College Road, Madras-600006.

3. Tamil Nadu Tamil and English
Schools Association, Madras-93,
represented by the General Secretary
B.T. Kumar. .. Respondents.

Petition under Article 226 of the Constitution of India, for issuance of a Writ of Declaration as stated therein.

For petitioner: Mr. K. Chandru, Senior counsel for
Mr. D. Hariparanthaman.

For respondents: Mr. R. Muthukumaraswamy, Addl.,
Advocate General assisted by Mr. V.R. Rajasekaran,
Spl. Govt., Pleader (Education) for R-1 and R-2.

Mr. V. Selvaraj for Mr. P. Chandrasekaran for R-3.

:ORDER

Tamil Nadu Matriculation and CBSE School Teachers' Association seeks to issue a Writ of Declaration declaring that the Code of Regulations for Matriculation Schools framed by the Government of Tamil Nadu, Education Department-first respondent herein, in consultation with the second respondent as ultra vires

of the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder.

2. The case of the petitioner Association is as follows: The petitioner Association is a body registered under the Tamil Nadu Societies Registration Act, 1975 and their Association has substantial teachers working in various Matriculation Schools in the State of Tamil Nadu. The Matriculation Schools in the State of Tamil Nadu were initially affiliated to the University of Madras created under the Madras University Act, 1923. Subsequently when Madurai Kamaraj University was formed such of the Matriculation Schools operating in Madurai Area and which were originally under affiliation to the Madras University were transferred to the Madurai-Kamaraj University. The Tamil Nadu Legislature passed the enactment called the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Tamil Nadu Act 29 of 1974) with a view to regulate the recognised schools in the State of Tamil Nadu. By virtue of Section 1 (3), the Act applies to all private schools. The Matriculation schools which were originally affiliated to the Madras University and Madurai-Kamaraj University were excluded by Section 2 (7) (c) and hence the provisions of the Act were not made applicable to them. In July, 1976 the Syndicate of the Madras University by a Resolution decided to drop the affiliation of Matriculation Schools as also from conducting the Matriculation examinations. Thereafter, instead of applying the provisions of the Private Schools Act and the Rules framed thereunder, the first respondent transferred the control of the Matriculation Schools to a board with the second respondent as its Chairman. This position was affirmed by issuing a G. O.Ms.No. 2816, Education, dated 29-12-1976. Subsequently, the first respondent ordered constitution of the Board of Matriculation Schools-vide G.O.Ms.No. 1720, dated 25-7-1977 by which they formed the Board and defined terms and conditions and functions of the Board. The Code applicable to the Matriculation Schools and recognised by the Director of School Education came into force with effect from 1-6-78. After the introduction of the plus 2 scheme, the Matriculation Schools also started following the Higher Secondary School course pattern and the syllabus and the curriculum adopted by them are the same. The public examination which is called Matriculation Examination which was originally conducted by the University is now being conducted at the end of the 10th Standard by the Director of Government Examinations. The medium of instruction in the Matriculation Schools is English. Instead of applying the provisions of the Private Schools Act, the second respondent without authority of law, are now applying the socalled "Code of Regulations for Matriculation Schools" and these Regulations are no longer referable to the provisions of the Private Schools (Regulations) Act and the Rules framed thereunder. Those provisions virtually deny the teachers, their conditions of service which are guaranteed by the Private Schools (Regulations) Act. Though under the Private Schools Act, the Management has to constitute a School Committee, it has power to take disciplinary action. In case of disciplinary action, prior approval of the competent authority has been made mandatory and against dismissal for the teachers, a first appeal is provided to an appellate authority and thereafter, a second appeal to the second appellate authority, which is a Judicial Tribunal. Such statutory provisions are not available for teachers working in the Matriculation Schools. The Code of Regulations for Matriculation Schools will have no statutory force. The strange arrangement

made in respect of Matriculation Schools by-passing legislative enactment is totally arbitrary and incomprehensible and as such liable to be declared null and void. In the Matriculation schools, teachers not only do the increased workload but are denied legitimate salary payable to them and they are deprived of statutory cover granted as provided under the Tamil Nadu Act 29 of 1974. The Regulations for Matriculation Schools do not have statutory force with regard to the job security of the teachers working therein; accordingly the same is violative of Article 2 1 of the Constitution read with Articles 41, 42 and 43 of the Constitution.

3. Additional Secretary to Government, School Education Department, Secretariat, Chennai-9 has filed a counter affidavit on behalf of respondents, wherein it is stated that in 1975, there were 30 Matriculation Schools, 29 in the jurisdiction of the Madras University and one in the jurisdiction of Madurai Kamaraj University. There were 5 Matriculation Schools in the Union Territory of Pondicherry affiliated to Madras University. All these schools were fee levying and the medium of instruction in all of them was English. No grants were being given to these schools. The students therein appeared for the Matriculation Examination conducted by the University. The Madras University at its meeting of the Syndicate in August, 1975 proposed that the Matriculation Schools under its control in Tamil Nadu be transferred to the Government Department of Schools Education on the ground that the University should concern itself with higher education and had to bear no responsibility to run schools and that it had no proper machinery and expertise to supervise the academic performances of these schools. At the instance of the Government, the ViceChancellor of the Madras University convened a meeting of the managements of the Matriculation schools with Government and University on 19-7-76 and certain recommendations were made. The recommendations were examined by the Government and by G.O.Ms.No. 2816, Education Department, dated 29-12-76, passed an order to the effect that a separate Matriculation Board be constituted under the Chairmanship of the Director of School Education. The Matriculation Schools in Tamil Nadu and Pondicherry will be affiliated to the above Board and they would continue to be fee based and use English as medium of instruction. The definition of "private schools" in Section 2 (7) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 does not include Matriculation Schools since in Tamil Nadu they were under the control of the University and not established by the aforesaid Act. Pursuant to the decision of the University and the Government Order, all the Matriculation schools were transferred to the administrative control of the Director of School Education and it was decided by the Board of Matriculation Schools at its first meeting held on 18-2-78 to frame a code of Regulations for Matriculation Schools. An eight member sub-committee was constituted. By framing the Code, none of the rights which were then available to the teachers were taken away. All the terms that existed prior to framing of the said Code continue to be in existence even after the framing of the Code except for the fact that the schools which were under the administrative control of the University are now under the administrative control of the Board of Matriculation Schools. Therefore, there is no legal compulsion to bring these schools under the control of Tamil Nadu Act 29 of 1974. The Code of Regulations for Matriculation Schools is a comprehensive and complete Code and there is no need to follow the provisions of the Tamil Nadu Recognised Private

Schools (Regulation) Act, 1973. The teachers and other non-teaching staff are given protection by the Management of the Matriculation schools. The Code of Regulations for Matriculation schools is more exhaustive and provides all remedies for the teachers in Chapter VI and there is no need to adopt the Private Schools Act. The provisions of the Code are not contrary to the provisions of the Act.

4. The impleaded third respondent, namely, Tamil Nadu Tamil Nadu Tamil and English Schools Association, Madras-93 has filed a counter affidavit reiterating the stand taken by the respondents 1 and 2.

5. In the light of the above pleadings, I have heard Mr. K. Chandru, learned senior counsel for the teachers Association, Mr. R. Muthukumaraswami, learned Additional Advocate General for respondents 1 and 2 and Mr. V. Selvaraj for third respondent-schools Association.

6. Mr. K. Chandru, after taking me through the Code of Regulations for Matriculation Schools as well as the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (hereinafter referred to as "the Rules"), has contended that those provisions in the Code for Matriculation Schools virtually deny the teachers, and their conditions of service which are guaranteed by the Act. He also contended that inasmuch as the Code of Regulation for Matriculation schools will have no statutory force, the Management of the Matriculation Schools are left to the whims and fancies of the owners of these schools. He further contended that by-passing legislative enactment only in respect of Matriculation schools is totally arbitrary and incomprehensible. According to him, the Management of these matriculation schools function in a most authoritarian fashion and to their whims and fancies since they are not amenable to any statutory control in view of the segregation of these Matriculation schools by the respondents' self-styled application of Code for the Board of Matriculation Schools. Inasmuch as the Regulation for Matriculation schools do not have a statutory force with regard to the job security of the teachers working in the Matriculation schools, the same is violative of Article 21 read with Articles 41, 42 and 43 of the Constitution of India. On the other hand, Mr. R. Muthukumaraswami, learned Additional Advocate General, after tracing the history of Matriculation Schools, the decision taken by the Madras and Madurai Universities, various orders of the Government for constituting a separate Board for Matriculation Schools and the Code of Regulation, would contend that in view of the fact that the Matriculation Schools came from different stream, they are being governed by a separate Code which were formulated to govern the Regulation. He also contended that by framing the Code none of the rights which were then available to the teachers were taken away, on the other hand, the Code of Regulation provide protection and remedies to the teachers and other non-teaching members as per Chapter VI and VII of the said Code. In any event, according to him, the Government is well within its powers to frame a Code of Regulations and issue executive instructions for Matriculation Schools. He further contended that the provisions of the Code are not contrary to the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and they are not in violation of Article 21 read with

Articles 41, 42 and 43 of the Constitution of India as claimed by the petitioner. Mr. V. Selvaraj, learned counsel appearing for the third respondent also highlighted the various clauses/safeguards for the service conditions of the teachers provided in the Code and contended that without following those provisions, the Management cannot terminate the services of a teacher or a member of non-teaching staff. He also contended that in the light of the qualifications prescribed for the teachers and staff, salary are being paid on par with those in Government schools, and provision is also made in the Code for filing appeal and Second appeal etc.; hence there is no merit in the claim made by the petitioner Association and prayed for dismissal of the same.

7. I have carefully considered the rival submissions.

8. This writ petition, filed by the Matriculation and CBSE School Teachers' Association, is mainly concerned with such of those provisions in the Code of Regulations for Matriculation Schools, which deny the teachers, their conditions of services which are guaranteed by the Tamil Nadu Recognised Private Schools (Regulations) Act, 1 973 (hereinafter referred to as "the Private Schools Act"). In other words, it is the main grievance of the Association that having enacted the Act and issued several instructions to the Matriculation Schools, by virtue of those provisions, the control and administration of the Matriculation Schools could have been brought under the definition "private schools". Before considering these issues and the relevant provisions from the Act as well as the Code of Regulations for Matriculation Schools, I shall refer certain facts relating to the history of the Matriculation Schools in Tamil Nadu. The particulars furnished in the counter affidavit of the Additional Secretary to the Government, School Education Department, Chennai-9 show that in 1975 there were 30 Matriculation Schools, 29 in the jurisdiction of the Madras University and one in the jurisdiction of Madurai Kamaraj University. There were 5 Matriculation Schools in the Union Territory of Pondicherry affiliated to Madras University. All these schools were fee levying and the medium of instruction in all of them was English. No grants were given to these schools. They had created the endowments stipulated by the University as well as the facilities for the course of study. The students therein appeared for the Matriculation Examination conducted by the University. It is clear that all these Matriculation schools were affiliated and controlled by the Universities in this State. However, the Madras University at its meeting of the Syndicate in August, 1975 proposed that all the Matriculation schools under its control in Tamil Nadu be transferred to the Government Department of School Education on the ground that the University should concern itself with higher education and that there was no need to bear the responsibility to run schools and that it had no proper machinery and expertise to supervise the academic performances of these schools. It is further seen that at the instance of the Government, the Vice-Chancellor of the Madras University convened a meeting of the managements of the Matriculation Schools with Government and University on 1 9-7-1976. The following recommendations were made in the said meeting:

"1. The Government be requested to set up a Board of Matriculation Schools on which some Principals/Headmasters of the Schools, Educators, the University

and the Department Officials, be represented with the Board being responsible for the care and maintenance of the Schools.

2. The Schools to continue to be fee-based and to be permitted to continue to use English as their medium of instruction;

3. They be continued to have their present freedom to innovate with regard to their curriculum, except for the last two years when they prepare for the examinations;

4. The Director of School Education be requested to examine the possibility of setting up a separate Inspectorate for Matriculation Schools;

5. The Matriculation Schools be encouraged to start the Higher Secondary Course, viz., Standards XI and XII, under the supervision of the Board of Higher Secondary Education;

6. Until the Government passed an order along the above lines the University to continue to be responsible for conducting Matriculation Examination in the summer of 1977 and for the transitional arrangements in 1978 and subsequent years;

7. A separate Board of Matriculation Schools be constituted who will arrange for the first 10 years Matriculation Examination which to be held in the summer of 1978."

It is further seen that on 3-8-76, the Vice-Chancellor, University of Madras communicated that the Syndicate had approved the above recommendations. The Syndicate, Madurai University also resolved to accept the views of the Government. As regards the Matriculation Schools in the State of Pondicherry, it had been reported that the Government of Pondicherry would like the Matriculation Schools in Pondicherry affiliated to the Board of Matriculation Schools proposed to be set up by the State of Tamil Nadu and that they would like one of their Education Department officials represented on the proposed Board. After examining all the above proposals, the Government passed the following orders in G.O.Ms.No. 2816, Education Department, dated 29-12-1976.

"1. A separate Matriculation Board be constituted under the Chairmanship of the Director of School Education;

2. The Matriculation Schools in Tamil Nadu and Pondicherry will be affiliated to the above Board and they would continue to be fee based and use English as Medium of Instruction. They would continue to have their present freedom to innovate with regard to the curriculum except for the last two years when they prepare students for the public examinations. The other recommendations referred to in paragraph 2 above were also approved by the Government?."

On the basis of the suggestion of the Director of School Education, the Government ordered the constitution of Board of Matriculation Schools in G.O.Ms.No. 1720, Education dated 25-7-1977 and also defined the terms, conditions and functions of the Board. An Inspectorate of Matriculation

Schools was also formed in G.O.Ms.No. 2678, Education dated 28-12-1977 with an Inspector in the rank of a District Educational Officer. In the first meeting held on 18-2-78, the Director of School Education as the Chairman of the Board of Matriculation Schools decided that the code of regulations might be compiled for these schools and appointed an "8 member sub-committee" for the said purpose. It is also brought to my notice that the draft code was circulated to heads of all the Matriculation Schools for their comments and suggestions and the code had finally been adopted by the Tamil Nadu Board of Matriculation Education and it came into force with effect from 1-6-197 8.

9. It is relevant to refer the definition of the expression "private school" in Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, which is as under:

"2 (7) "private school" means a pre-primary, primary, middle or high school or higher secondary school or any other institution imparting education or training, established and administered or maintained by any person or body of persons, and recognised by the competent authority under this Act but does not include a school or an institution-

(a) imparting technical or professional education;

(b) established and administered or maintained by the Central Government or the State Government or any local authority;

(c) maintained or approved by, or affiliated to, any University established by law; or

(d) giving, providing or imparting religious instruction alone, but not any other instruction;"

The above definition makes it clear that the schools maintained or approved by, or affiliated to, any University established by law are not "private schools" within the meaning of Section 2 (7) (c) of the Act. There is no dispute that these Matriculation Schools were affiliated to Universities till the Universities decided to transfer those schools to the Government Department of School Education. In view of the origin and of the fact that the Matriculation Schools were affiliated to Madras and Madurai Kamaraj Universities and subsequently transferred to the Government Department of School Education and in the light of clause (c) of sub-Section (7) of Section 2 of the said Act, all Matriculation Schools do not come under the purview of Tamil Nadu Recognised Private Schools (Regulation) Act. I have already referred to that only on the request of the Universities, all the Matriculation Schools were transferred to the administrative control of the Director of School Education and based on the decision, a Code of Regulation for Matriculation Schools were framed by 8 member sub-committee. It is also not disputed that the provisions of the said Code are almost on the lines of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act. The distinctive features are that the Matriculation Schools enjoyed power to collect fee.

10. Now I shall consider the salient features of the Private Schools Act relating to the service conditions of the teachers. Mr. K. Chandru, learned senior counsel for the petitioner, by drawing my attention to various safeguards provided for teachers in the Private Schools Act and the Rules made thereunder, would contend that in the absence of similar statutory enactment in the Code, the teachers in the Matriculation Schools are being exploited by the Management by applying the terms of contract between the teacher and the Management and the Code of Regulations. It is true that in the Private Schools Act, every private school according to Chapter IV is bound to constitute a "School Committee" (Section 15) and the said School Committee is empowered to deal with the administration including the power to take disciplinary action (Section 18) and under Section 19, service conditions are to be framed by the Government. It is further seen that in case of disciplinary action, prior approval of the competent authority has been made mandatory and against dismissal for the teachers, a first appeal is provided to an appellate authority and thereafter, a second appeal to the second appellate authority, which is a Judicial Tribunal. Further, it is pointed out that there are restrictions on the part of the private schools from suspending their teachers for an indefinite period. It is also brought to my notice that under Section 28 of the Act, overriding powers are given over any other law for the time being in force and/or any award or agreement or contract of service. It is also brought to my notice that under Section 34 of the Private Schools Act, if any private school management has neglected to discharge its duties and functions, then Government can take over the management of such school. By pointing out all these statutory provisions, Mr. K. Chandru, learned senior counsel for the petitioner, vehemently contended that the Private Schools Act and the Rules framed thereunder are more beneficial to the teachers and it is rather unusual that the respondents 1 and 2 have indulged in framing of a Code separately for the Matriculation Schools by exercising their executive fiat over those schools. There is no dispute that by virtue of the provisions of the Private Schools Act and the Rules, the teachers and staff are provided with sufficient safeguards and security for their services.

11. Now I shall consider the salient features in the Code of Regulations for the Matriculation Schools. I have already referred to the constitution of the sub-committee, its recommendation and the ultimate decision of the Government in forming Code of Regulations for Matriculation Schools. The Code is applicable to Matriculation Schools recognised by the Department of School Education, Tamil Nadu. It came into force with effect from 1-6-78. Regulation 2 defines the term "Matriculation Schools" which were recognised by the Universities of Madras and Madurai and subsequently recognised by the Department. It also clarifies that schools which will be admitted into this category subsequent to the Regulations will also be called the Matriculation Schools and be governed by the said Code. According to Regulation 2 (viii), Education Agency means any person or body of persons which has established and is administering or proposes to establish and administer such Matriculation Schools. The schools will continue to be fee based and use English as medium of instruction. They will continue to be free as hitherto to innovate with regard to their curriculum except for the last one year when they prepare students for the public examination (Regulation 7). This Code is also applicable to Higher Secondary Section of Matriculation Schools (Regulation

8). Chapter II of the Code speaks about recognition of Matriculation Schools. Chapter III refers to admission and withdrawals. Chapter IV relates to School Regulations. Chapter V speaks about financial side of Matriculation Schools. As per Regulation 16 (ii), the teacher and non-teaching staff in Matriculation Schools should be paid at least as per the Government Scales of pay revised from time to time. Chapter VI is important for our purpose which refers to staff of Matriculation Schools. The staff will be qualified in accordance with the prescription made in Annexure-VI to the Code (Regulation 17). Regulation 18 prescribes the retirement age of teachers and staff. Clause (ii) of Regulation 18 insists that the staff in Matriculation Schools will be paid at the rate of Government scales of pay and they are eligible for selection grade after 10 years of service as in other recognised schools. It also says that the teachers and other persons employed in Matriculation schools shall be governed by the Code of Conduct, as specified in Annexure-VII to the Regulations. In a permanent vacancy, member of teaching and non-teaching staff shall be appointed only on probation for a period of 12 months from the date of his/her appointment. But the school authority may before the expiry of that period extend it to a further period not exceeding 12 months for reasons to be given in writing to the teacher and acknowledged by the teacher (Regulation 19). Regulation 20 speaks about termination of teachers or a member of non-teaching staff.

"20. Terminations-(A) In respect of Teachers or a Member of non-teaching staff appointed temporarily or to act on probation.- The management shall have power to terminate the services of such teacher or a member of non-teaching staff without notice for any or all of the following reasons-

(i) Wilful neglect of duty, serious misconduct, gross insubordination, mental unfitness, suspension or cancellation of teachers' certificates by the Director under the Code of Regulations for Matriculation Schools.

(ii) With notice of two months or two months salary in lieu thereof for the following reasons:-

(a) Incompetence, (b) Retrenchment, (c) Physical unfitness or any other good cause.

Termination-(B) In respect of teachers or a member of nonteaching staff appointed permanently.- The management shall have the power to terminate the services of such teacher or a member of nonteaching staff without notice for any or all of the following reasons:-

(a) Wilful neglect of duty, serious misconduct, gross insubordination, mental unfitness, suspension or cancellation of teachers' certificates by the Director under the Code of Regulations for Matriculation Schools.

(ii) With three months notice or three months salary in lieu thereof for the following reasons:-

(a) Incompetence (b) Retrenchment (c) Physical unfitness or any other good cause.

Subject to the proviso given below:-
(i) The school authority shall not terminate the services of the said teacher or a member of non-teaching staff whether summarily or otherwise without informing him in writing of the grounds on which they intend to take action and giving him/her what in their view is a reasonable opportunity for stating his/her case in writing and before coming to a final decision, shall duly consider his/her statement and if he/she so desires give him/her a personal hearing or conduct an enquiry.

(ii) After the conduct of the personal hearing or enquiry by the management of a notice will be issued to him/her setting out the proposed punishment and he/she shall be given a reasonable time to defend himself/herself against the proposed punishment.

(iii) It shall be lawful for the school authority at any time if satisfied on medical evidence that the said teacher or a member of non-teaching staff is unfit and is likely for a considerable period to continue unfit by reason of ill-health, for the discharge of his/her duties as such teachers or a member of non-teaching staff to terminate his/her services on paying him/her three months salary less any amount which may have been paid to him/her as leave allowance after the date of his/her last appearance in the school, for the regular discharge of his/her duties as teacher or a member of non-teaching staff subject to a minimum of one month's full salary.

(iv) That the said teacher or a member of non-teaching staff shall not during the period of this agreement which he/she has not been given notice of termination of his/her services by the school authority or has not given notice to the school authority for such termination of his/her services apply for an appointment under any other authority except through the school authority and the penalty for any breach of this may at the discretion of the school authority be dismissal from service. The school authority shall not refuse to forward such application but may decline to relieve him when the need arises unless he/she gives due notice or pays an amount equal to the salary for three months.

(v) That the said teacher or a member of non-teaching staff when he/she becomes a permanent member of the staff of the said school shall be entitled to have his/her services terminated either by giving to the school authority three months notice thereof in writing or by paying that authority three months salary in lieu of such notice."

Regulation 21 deals with imposition of minor punishments. Even for awarding minor punishments, the Management has to follow all the procedures as laid down for the major punishment. As per Regulation 22, if the appointment is for a period exceeding six months, the management shall enter into an agreement with the teacher or a member of nonteaching staff in Forms given in Annexure-VIII to the Regulations. Three copies of the agreement shall be executed and one copy shall be furnished to the teacher or a member of non-teaching staff concerned, and the other copy shall be retained by the management and the third copy shall be forwarded to the Inspector. Regulation 22A which provides for appeal is as follows:-

"22A. In all cases of punishments, except in cases, of censure, an appeal lies with the Director in respect of the Principal/ Headmaster/Headmistress, B.T.Assistants and other teachers drawing B.T. Scale of Pay and for all other categories of staff including nonteaching staff the Inspector is the appellate authority. An appeal shall lie with the Government against the orders passed by the Director and similarly an appeal shall lie with the Director against the orders passed by the Inspector. If the appeal is made after two months from the receipt of orders of punishment, it will be considered as belated."

Chapter VII speaks about leave rules. As per Regulation 23, the leave rules approved by the Government of Tamil Nadu for teaching and non-teaching staff in other recognised schools are applicable to Matriculation Schools also. As rightly contended by the learned Additional Advocate General, a perusal of all the aabove Regulations shows that by framing the Code, none of the rights which have been available to the teachers were taken away and all the terms that existed prior to framing of the said Code continue to be in existence even after the framing of the Code except for the fact that the schools which were under the administrative control of the University are now under the administrative control of the Board of Matriculation schools. It is also clear that Matriculation Schools are granted recognition under Regulation 10 of the Code of Regulations for Matriculation Schools by fulfilling certain conditions. The Code of Regulations for Matriculation Schools by and large provide protection and remedies to the teachers and other non-teaching staff members under clauses 17 to 23 in Chapter VI and VII of the said Code. In other words, the Code of Regulations for Matriculation Schools is a comprehensive and complete Code and in the light of the definition 2 (7) of the Private Schools Act, exclusion of Matriculation Schools from the purview of the said Act, there is no need to follow the provisions of Private Schools Act. No doubt, there is no provision for constitution of "school committee" in Matriculation Schools, however, as pointed out above, Chapter VI and VII deal with qualification of the staff, the method/ground for termination, procedure, major and minor punishments as well as provision for appeal to the Director in respect of the Principal/Headmaster/ Headmistress/B.T. Assistants and other teachers drawing B.T. scale of pay and for all other categories of staff including non-teaching staff the Inspector is the appellate authority. Further, an appeal shall lie with the Government against the orders passed by the Director and an appeal shall lie with the Director against the order passed by the Inspector. In such circumstances, I am unable to accept the contentions raised by the learned senior counsel for the petitioner.

12. Now I shall consider various decisions relied by both sides.

13. Mr. K. Chandru at the foremost relied on a decision in Miss. A. Sundarambal v. Govt., of Goa, Daman and Diu and others, reported in 1989 (1) L.L.J. 61, wherein Their Lordships have held that, the teachers employed by educational institutions, whether the said institutions are imparting primary, secondary, graduate or postgraduate education, cannot be called as "workmen" within the meaning of Section 2 (s) of the Industrial Disputes Act. It is clear from the above conclusion that the teacher is not a workman though the school is an industry in view of the definition of 'workman' as it now stands. Learned senior counsel very much relied on the following observation of the

Supreme Court: (para 10)

"10. We may at this stage observe that teachers as a class cannot be denied the benefits of social justice?"

After saying so, Their Lordships have directed the State Governments to enact appropriate legislation providing for adjudication of disputes between teachers and the Managements of the educational institutions.

14. In Bharat Sevashram Sangh v. State of Gujarat, reported in (1986) 4 Supreme Court Cases 51, the Supreme Court, after considering Gujarat Secondary Education Act, 1972, particularly Section 36, observed that, (para 10)

"10?..It protects the tenure of the teachers and of the non-teaching staff of a registered private secondary school and acts as a shield against arbitrary actions of the management result in wrongful termination of their services?.."

15. In Frank Anthony Public School Employees' Association v. Union of India, reported in (1986) 4 Supreme Court Cases 707, the following conclusion of Their Lordships is pressed into service: (para 21)

"21. The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions. We, therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of Chapter IV (except Section 8(2) in the manner provided in the Chapter in the case of the Frank Anthony Public School. The management of the school is directed not to give effect to the orders of suspension passed against the members of the staff."

16. In Senthilnathan, T. v. The Chief Educational Officer, South Arcot Dt., reported in 1985 Writ L.R. 533, a learned Single Judge of this Court has held that the definition of a private school is wide and comprehensive which includes any other institution imparting education or training without reference to the categorisation of the institution as primary, middle or high school or secondary school. In the light of Section 2 (7) (c) of the Private Schools Act, I am of the view that the said decision is not helpful to the petitioner's case.

17. In Christy Corers, T.P. v. The State of Tamil Nadu, reported in 1992 Writ L.R. 83, a learned Single Judge of this Court has held that the "Code" itself contains only executive instructions.

18. The other decision relied on by the learned senior counsel for the petitioner is in the case of Jawahar College Staff Association, etc./Secretary, Jawahar Science College, etc. v. University of Madras and others, reported in 1994 Writ L.R. 84, wherein a Division Bench of this Court, after referring to Tamil Nadu Private Colleges (Regulation) Act, 1976,

has observed that the executive power of the State Government to that extent gets circumscribed and it has to exercise its power only in conformity with the provisions of the Act and the Rules framed thereunder. Absolutely there is no dispute that after the formation of the Private Colleges Act, the provisions of the said Act and Rules framed thereunder alone are applicable to Private Colleges and the management and teachers are bound by those provisions.

19. By drawing my attention to another decision in The Saliar Mahajana Hr. Sec.School v. The Joint Director of Schools (Hr. Sec.) etc., (1995 Writ L.R. 277), learned senior counsel for the petitioner has contended that the Rules under the Government Order are only Administrative Rules in so far as they relate to Aided Schools and they cannot be treated as statutory Rules.

20. The other decision is in Laxman Dundappa Dhamanekar v. Vishwa Bharata Seva Samiti (2001) 8 SCC 378, wherein the Supreme Court has held that "in the absence of such provision in the Act, it is not open to the Government to supplement the Rules by executive orders."

21. In the case of Regina v. St. A.H.E. School, (AIR 1971 S.C. 1920), wherein the Supreme Court affirmed the view expressed by this Court that "the Rules were not statutory Rules, they could not enlarge the scope of the contract of employment between such an employee of the school and the management."

22. A perusal of the above decisions shows that (i) a teacher is not a workman within the meaning of Section 2 (s) of the Industrial Disputes Act though the School was an industry; (ii) the Code which contains only executive instructions are not legally enforceable in a Court of law; and (iii) the Rules under Government Order are only administrative Rules under Article 162 of the Constitution of India and they cannot be treated as statutory Rules.

23. Learned Additional Advocate General relied on the following passage in the Full Bench decision of this Court in Tamil Nadu Tamil and English School Association v. State (2000 (II) CTC 344): (para 53)

"53. Coming to the present case, as already pointed out the Matriculation Schools have been teaching in English medium for over fifty years. They have been permitted to continue ever since the date of recognition of all the Schools and that recognition has been granted without any condition."

24. Regarding the contention that based on the contract between the teacher and the management under the Code of Regulations applicable to Matriculation schools, the same cannot be enforced by exercising writ jurisdiction of this Court and to dispel the said doubt, learned Additional Advocate General relied on a decision of the Supreme Court in Shri Anadi Mukta Sadguru

S.M.V.S.J.M.S.Trust v. V.R. Rudani, reported in AIR 1989 S.C. 1607. In that decision, the Hon'ble Supreme Court after referring to power of the High Court under Article 226 of the Constitution held thus: (para 19 and 21)

"19?.The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of th e body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owned by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

21. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, professor De Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by character, common law, custom or even contract." (Judicial Review of Administrative Act 4th Ed.p.540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226?"

It is clear from the above decision that if there is a breach of condition of the terms of the agreement, the aggrieved person can very well approach this Court to vindicate his grievance in view of the obligation on the part of the management to fulfil certain mandatory conditions provided in the Code. It is also clear that Article 226 of the Constitution of India confers wide powers on the High Courts to issue Writs in the nature of prerogative Writs. Writs can be issued to "any person or authority".

25. In support of his contention that Article 14 does not apply, learned Additional Advocate General has relied on another decision of the Supreme Court in Lachiman Dass v. State of Punjab, reported in AIR 1963 Supreme Court 222. In that decision, Their Lordships have held that while Article 14 prohibits discriminatory legislation directed against one individual or class of individuals, it does not forbid reasonable classification, and for this purpose even one person or group of persons can be a class. As rightly analysed, these Matriculation Schools were in existence historically, form a class by itself and there is no question of applying violation of Article 14.

26. The other decision very much relied on by the learned Additional Advocate General is in the case of M/s. Bishamber Dayal Chandra Mohan v. State of U.P., reported in AIR 1982 Supreme Court 32. With regard to the contention that in the absence of statutory provisions, the State cannot issue executive orders and control the affairs of these Matriculation Schools, the following conclusion of Their Lordships is relevant: (para 20)

"20??.It is neither necessary nor possible to give an exhaustive enumeration of the kinds and categories of executive functions which may comprise both the formulation of the policy as well as its execution. In other words, the State in exercise of its executive power is charged with the duty and the

responsibility of carrying on the general administration of the State. So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf. Otherwise, the administration would come to a standstill."

The above view of the Supreme Court has been followed by the Division Bench of this Court in C. Stephenson Roobasingh v. State of Tamil Nadu and others (1993 Writ L.R. 544). In para 34, the Division Bench has held:

"34?.The right of the State Government to frame Rules in the absence of any statutory provision has been recognised beyond doubt. It has been held in M/s. Bishamber Dayal Chandra Mohan v. State of U.P. (AIR 1982 SC 32) that if there is no enactment covering a particular aspect the Government can carry on the administration by issuing administrative directions or instructions until the Legislature makes a law in that behalf, as otherwise the administration would come to a standstill?.."

27. It is clear from the above decisions of the Supreme Court that even in the absence of legislation, in view of the fact that the Matriculation Schools were in existence even prior to the enactment of Private Schools Act, affiliated and controlled by Madras and Madurai Universities, and also of the fact that after constitution of the 8 Members Sub-Committee and after its suggestion and acceptance by the Board of Matriculation Education, the Government, by exercise of their executive powers, have framed the Code of Regulations for Matriculation Schools, the same cannot be faulted with until the legislature makes a law in that behalf.

28. In the light of what is stated above, till the legislature brings a legislation for Matriculation Schools on par with Tamil Nadu Recognised Private Schools (Regulation) Act, the Government is well within their powers to issue executive instructions in the form of Government Orders. In the light of various clauses, particularly Clauses 17 to 23 in Chapter VI and VII of the Code of Regulations for Matriculation Schools which are more exhaustive and which provides for service conditions of teachers and other staff, I hold that the impugned Code of Regulations for Matriculation Schools framed by the Government of Tamil Nadu are valid; accordingly the writ Petition fails and the same is dismissed. No costs.

Index: Yes
Internet: Yes
R.B.

To:-
1.State of Tamil Nadu,
represented by the Commissioner and
Secretary to Government,
Education Department,
Fort St. George, Madras-9.

2. The Director of School Education,
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P. SATHASIVAM, J.

Order in W.P.No.197/93

Dt: 19-07-2002